IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Satya Narayan Mohata v. Central Bank of India & Ors.

S.B.CIVIL WRIT PETITION NO.3484/1990
under Article 226 of the Constitution of India.

Date of Order : 2nd September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi]
Mr. Girish Joshi], for the petitioner.
Mr. P.K.Bhansali, for the respondents.

BY THE COURT :

The petitioner was served with a memorandum dated 30.8.1983 along with articles of charge and statement of imputation of articles of charge to be framed against him. Four allegations were levelled against the petitioner under articles of charge which are as follows:-

> "1.He misused his official position by allowing advances to M/s Mahindra Metals Industries, ignoring the important laid down terms and conditions of the sanction.

2.He deliberately concealed the facts from higher authorities and unauthorisedly accommodated M/s Mahindra Metals Industries by not entering the IBC cheques drawn by them in Inward Bills for Collection Register and again over detaining them keeping aside the Bank's laid down procedure.

3.He deliberately caused displacement of Bank's important files from record.

4.He has not taken proper care to protect the Bank's interest and a number of documents in Loans and Advances Accounts had expired due to his negligency in his tenure and because of which Bank may sustain financial loss."

The petitioner submitted an explanation, however, the disciplinary authority decided to inquire into the allegations levelled against the petitioner and, therefore, an inquiry officer was appointed. The inquiry officer completed the inquiry and submitted its report dated 21.10.1986 to the disciplinary authority. The disciplinary authority while concurring with the inquiring officer by an order dated 23.10.1986 awarded the penalty of withholding of promotion for two years with effect from the date of order in terms of regulation 4(c) of the Central Bank of India Officers Employees' (Discipline and Appeal) Regulations, 1976. The disciplinary authority while imposing the punishment as referred above gave his finding with regard to charges alleged as under:-

> "I hold that being the branch manager of the branch Shir Mohata was certainly responsible for over detention of the captioned cheques. As regards, other parts of the charge No.1, I hold that the same are not proved against Shri Mohata. It is not proved that Shri Mohata misused his official position in allowing advances to M/s Mahendra Metal Industries.
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> Charge No.2.-This charge has been discussed in detail while giving my findings in respect of Charge No.1. In view of the foregoing discussion, I hold that Shri S.N. Mohata unauthorisedly accommodated M/s Mahendra Metal Industries by over detaining the cheques received in IBC.
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> Charge No.3&4.-Since neither any document has been produced nor any witnesses has been examined to prove these charges, I hold that these charges are not proved against Shri Mohata."

From findings of the disciplinary authority it is apparent that the petitioner was found guilty for misusing his official position in allowing advances to M/s Mahendra Metal Industries and also for unauthorisedly accommodating Mahendra Metal Industries by over detaining the cheques received in IBC.

The petitioner being aggrieved by order passed by the disciplinary authority preferred an appeal before the appellate authority i.e. the Dy.

General Manager, Central Bank of India, Zonal Officer, New Delhi. The appeal preferred by the petitioner was accepted in part by the appellate authority vide order dated 6/16.7.1987. The appellate authority set aside the punishment awarded by the disciplinary authority and substituted the same by punishment of censure to the appellant in terms of regulation 4(a) of the Regulations concerned.

The appellate authority while considering the appeal preferred by the petitioner held that the Management failed to prove that the bills were purchased by the petitioner, accordingly the petitioner was exonerated from that charge. The appellate authority also found that the cheques enlisted were not purchased by the petitioner but had been purchased by other officers during the period when petitioner was on leave and the persons who purchased the cheques enlisted were also responsible for over detention of the bills. The appellate authority determined the responsibility of the petitioner for over detention of the cheques being branch manager of the branch of respondent Bank.

By present writ petition a challenge is given by the petitioner to the order passed by the appellate authority to the extent it imposes a penalty of censure upon him by holding him guilty for the supervisory negligence as stated above.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the appellate authority after considering the entire record of the inquiry recorded a specific finding against the petitioner which is not required to be interfered by this Court under Article 226 of the Constitution of India. On behalf of the respondents a preliminary objection is also raised i.e. with regard to non-maintainability of the writ petition due to non-joinder of necessary party. It is contended that the petitioner failed to join the disciplinary authority as party respondent, therefore, this petition for writ cannot be maintained.

Heard counsel for the parties.

Before adjudging merits of the case I would like to decide the preliminary objection raised by counsel for the respondents.

As stated above, it is contended by counsel for the respondents that this petition for writ is required to be rejected being suffered by lacunae of non-joinder of necessary party as the disciplinary authority is not joined as party respondent. On face the objection raised by the petitioner is misconceived as the Regional Manager of the Regional Office of the respondent Bank is disciplinary authority in the

present case. The Regional Manager is party respondent to the proceedings.

The contention of counsel for the respondents is that addition of Regional Manager, Regional Office of Central Bank of India is not sufficient as the order passed by him imposing penalty of stoppage of promotion for two years was passed in capacity of disciplinary authority and not in capacity of Regional Manager. This contention of the respondents is also having no force for two reasons; firstly, the Regional Officer himself is the disciplinary authority and is competent enough to assist the Court in granting effective relief to the parties to the proceedings and secondly the order which is essentially under challenge is the order passed by the appellate authority to the extent it imposes a penalty of censure. The appellate authority has already set aside the punishment of stoppage of promotion for two years and, therefore, even if it is assumed that the disciplinary authority is not party to the proceedings this petition cannot be thrown on that count.

While coming to the merits of the case it is contended by counsel for the petitioner that he has been penalised on an allegation for which he was never charged. It is contended by counsel for the petitioner that so far as allegations No.3 and 4 are concerned, he was exonerated even by the inquiry officer and was

found guilty for allegations No.1 and 2 only that too in part. The appellate authority exonerated him from the allegation that the petitioner was responsible for any unauthorised accommodation to M/s Mahendra Metal Industries. The appellate authority in quite unambiguous terms held that enlisted cheques were purchased by the officers other than the petitioner during the period the petitioner was on leave and they were responsible for over detention of those bills. In view of this finding of the appellate authority that the petitioner never misused his official position and he also not deliberately concealed the facts from higher authorities for his unauthorisedly accommodating Mahindra Metal Industries by over detaining the cheques received in IBC, he could not be subjected to penalty. According to counsel for the petitioner the petitioner was charged with regard to over detention of cheques with an intention to unauthorised accommodation of Mahendra Metal Industries by misusing official position. Once a finding is given that the petitioner has not misused his power and he also never intended to conceal the facts from higher authorities for unauthorised accommodation to Mahendra Metal Industries, he could not be held responsible for over detention of cheques being supervisory head of the branch. It is emphasised by counsel for the petitioner that the petitioner was never charged for supervisory negligence.

Per contra, it is contended by counsel for the respondents that the petitioner committed breach of Regulations by over detention of cheques, therefore, he was rightly punished by the appellate authority.

I have given my thoughtful consideration to the contentions raised by counsel for the parties.

From the facts stated above it is clear that the petitioner at first instance was found guilty for allegations No.1 and 2 partially. The allegation No.1 is with regard to misuse of official position to make advance to Mahendra Metal Industries and the charge No.2 pertains to unauthorised detention of cheques with an intention to accommodate Mahendra Metal Industries. In both the charges the emphasis is on extraneous support to Mahendra Metal Industries by misusing of official position and by unauthorised over detention of cheques received in IBC. The appellate authority after considering the contentions raised by the petitioner in his appeal reached at a specific conclusion that the cheques enlisted were purchased by the persons other than the petitioner during the period the petitioner was on leave. Therefore, it is quite clear that the petitioner has not misused his official powers. He cannot also be held responsible for unauthorised detention of cheques when the appellate authority also not found the petitioner

guilty for the same. From reading of order passed by the appellate authority it is clear that the petitioner was found guilty for detention of cheques being supervisory head of the branch. Meaning thereby the petitioner was held guilty for supervisory negligence only. The petitioner was never charged for supervisory negligence under the memorandum dated 30.8.1983. In view of it the respondents have penalised the petitioner for an allegation to which the petitioner was never charged. Accordingly the order passed by the appellate authority to impose the punishment of censure is also bad in eye of law.

This petition for writ, therefore, succeeds and the same is hereby allowed. The order passed by the appellate authority dated 6.7.1987 is quashed to the extent it imposes a penalty of censure upon the petitioner. The petitioner stands exonerated from the charged alleged.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.